UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1717
4 November 1998

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1717th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 October 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI
(Vice-Chairperson)

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GE.98-19265 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Japan (CCPR/C/115/Add.3 and Corr.1; CCPR/C/64/Q/JAP/1)

1. At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.

2. The CHAIRPERSON invited the delegation to continue with its replies to the matters raised in connection with the second part of the list of issues (CCPR/C/64/Q/JAP/1).

3. Mr. SAKAI (Japan) said that no law specifically prohibited bringing children from abroad to Japan for sale and trafficking for sexual purposes, but if a child was abducted, the Penal Code was applicable. If a child was handed over to someone likely to harm him or her, such an act was punishable under the Child Welfare Law.

4. In regard to the sex trade, particularly Japanese men using Asian children for sexual purposes, if the child was under 13 years of age the act was categorized as rape and the relevant provisions of the Penal Code applied. Even if the offence was committed outside Japan, the offender could be punished in Japan. The maturity of the child had to be taken into account in considering whether age 13 was the proper threshold for the act to be designated as rape.

5. On 22 May 1998, a bill that would make child pornography and sex tourism targeting children criminal offences had been submitted to the Diet; it was still under discussion. It would define anyone under 18 years of age as a child and make the crime of purchasing children for sexual purposes punishable by up to five years' imprisonment. Circulating child pornography would be punishable by up to 3 years' imprisonment with prison work.

6. As to whether there were open trials in Japan, all observers were allowed to take notes and television cameras were allowed into some courts before the start of the trial.

7. The prohibition on door-to-door vote canvassing was deemed necessary in Japan because it could very easily lead to bribery in electoral campaigns. Regrettably, instances of bribery had occurred in past elections.

8. A question had been asked about the dissolution of organizations under the Subversive Activity Prevention Law. The purpose of such measures was to protect public order in accordance with the Constitution. Action could be taken to have an order to dissolve an organization rescinded by bringing proceedings in court. Administrative orders on dissolution could be issued by the Public Order Review Committee, an organ of the Ministry of Justice that was nonetheless independent. The members had to be persons of high integrity to enable them to pass fair and equitable judgement on the organizations under review and had to have the requisite expertise in the law and public affairs.

Their candidacy had to be approved by the House of Counsellors and the House of Representatives, but they were appointed by the Prime Minister. The present members of the Committee included lawyers, former judges and businessmen. Another body under the Ministry of Justice, the Public Security Examination Commission, had once asked the Committee to order the dissolution of a religious organization known as Aum Supreme Truth, but the Committee had rejected that request.

9. As to Mr. Yalden's question on disclosure of evidence in the Ishakawa case, which in Japan was known as the Sayama case, he said that a person seeking retrial was permitted to peruse the court records, including the evidence submitted by prosecutors in public hearing. Evidence submitted in any context other than a public hearing could not be viewed, however, as it was considered that that would violate the privacy of the parties involved and might diminish the likelihood of cooperation in future investigations. In every instance, the prosecutor took account of the bearing of the evidence on the case in which retrial was sought and the need to protect the privacy of the parties concerned. That was precisely the course of action followed by the prosecutor concerning the petition for disclosure of evidence in the retrial hearing on the Sayama case. From 1981 to 1995, nine requests for disclosure of evidence had been received and 28 items of evidence had been disclosed.

10. Mr. FUKUMOTO (Japan), referring to the suggestion that the prohibition for a limited period of remarriage by women should be abolished, said the purpose was to ensure that paternity was clearly established, something his Government regarded as reasonable. True, scientific methods of confirming paternity had now become available, but they were lengthy procedures which the State could not force women to undergo. As long as the identity of a child's father had not been clearly established, the child's welfare suffered. The objective of equality between men and women should not be pursued to the detriment of the child. Other countries applied measures similar to those in Japan.

11. There was no discrimination against illegitimate children acquiring Japanese nationality. Nationality could be conferred by either parent under the *jus sanguinis* principle. However, if the father was Japanese but the mother was not, and the father failed to acknowledge the child before birth, the child could not take Japanese nationality upon birth. The purpose, which again, the Government considered reasonable, was to ensure legal stability and equity. If the child was acknowledged after birth, the father and the mother married, and the necessary documents and applications were submitted, Japanese nationality could then easily be obtained for the child. An indication of whether or not the child was legitimate was required under the census law. It was not true that foreigners were subjected to pressure to take Japanese names on naturalization. According to the census law, if a foreigner had already taken a Japanese name the name could be changed if sufficient reason was given.

12. The Civil Code revision bill had not yet been submitted to the Diet, because an eye was being kept on developments in public opinion.

13. Mr. NISHIKAWA (Japan) said that one member had asked about fingerprinting and re-entry of Koreans living in Japan. A number of lower court decisions had already been handed down on that subject. There were also four Supreme Court decisions, the most recent of which had been rendered on 24 April 1998. All of them had held that fingerprinting did not violate the Constitution, the principle of equality or the provisions of articles 7 and 26 of the Covenant.

14. Mr. KAITANI (Japan), referring to the questions on protection of privacy and personal data, said there were a number of restrictions. The personal information file was to be consulted only when necessary in the performance of administrative tasks and only by legally designated administrative bodies. Only a minimum of information should be incorporated in the file. The law permitted requests to be filed to correct personal data and information and, if the correction was not made, an application could be made to review the problem. On the matter of preventing the dissemination of the personal data in the possession of the private sector, several ministries applied their own guidelines, but two had carried out studies on personal data held by financial institutions with a view to issuing regulations on the subject.

15. The Constitution prohibited censorship and nothing that could be described as such existed in Japan. Freedom of the press was ensured, as part of the freedom of expression. There were no laws restricting newspaper reporting, although the broadcast media were required to observe some discipline. Programmes had to meet certain guidelines: not to violate public order or morals, to be politically fair, not to distort the facts and to present as many viewpoints as possible where there were conflicting opinions. Decisions on those points were left to the operators of the media, which issued corrections if it was found that excesses had been committed.

16. His Government was conversant with the discussion within the International Labour Organization of the prohibition on strikes by public officials. If the right to strike was granted to public officials, however, it might seriously affect the livelihood of ordinary citizens.

17. On the subject of violence against women, the Government was not in a position to confirm or deny the very high figure advanced for cases of domestic violence. However, it recognized that widespread sexual violence in the home would impede the construction of a society based on gender equality and had, accordingly, set up a special sub-committee to study the problem. Referring to a comment by Lord Colville, he said there had been no change in the government position on the matter and therefore the delegation did not propose to give any additional answer at the present stage. He would, however, state for the information of Committee members that the allegation that former Prime Minister Hashimoto had instructed the delegation not to change anything in the report was incorrect.

18. The question as to whether the Ainu people were an indigenous people would be given careful consideration in future. As stated in the report, the prefectural Government of Hokkaido was making efforts to improve the living standards of the Ainu, in particular by assisting students from the Ainu community to enter senior high schools and universities. As to the dowa issue, the Government had acted under the Special Measures Law concerning

that problem on three occasions since 1969 and had spent a total of 4.2 trillion yen on improving the life of dowa district residents. A survey conducted in May 1996 had shown that considerable improvements had indeed taken place. No new areas had been designated since 1987, and the wishes of local residents were being duly taken into consideration.

19. Mr. KATSUMO (Japan), speaking on the subject of education, said that Japanese law explicitly prohibited corporal punishment in schools. The practice was not condoned under any circumstances and disciplinary action was taken against teachers who ignored the prohibition. As far as general school regulations were concerned, the policy was to maintain orderly conditions conducive to study while taking the basic rights of individual students fully into account. The problem of bullying in schools was complex and called for a comprehensive approach based on promoting cooperation between schools and families, devoting greater attention to the needs of individual students, improving teacher efficiency and providing counselling where needed. That approach was being used to eradicate bullying.

20. The final judgement as to whether a secondary school textbook produced in the private sector was suitable lay with the Ministry of Education. The Ministry was responsible for maintaining nationwide standards with regard to equality and neutrality in education as well as to the appropriateness of the facts taught. If, for example, a history textbook contained misstatements, they had to be rectified. However, the State did not and could not compel the author to include any specific facts in a text book. For those reasons, it was felt that the textbook authorization system was being implemented in a reasonable manner. Lastly, in response to a question about university entrance for Korean residents in Japan, he said that the Government directive to prefectural Boards of Education, referred to in paragraph 47 of the third periodic report (CCPR/C/70/Add.1) remained valid. Most of the schools set up for Korean students were currently recognized as "miscellaneous" schools by the prefectural Governments. The Ministry of Education was dealing with the matter on that basis.

21. Mr. SUGINARA (Japan), referring to questions asked in connection with health and welfare, said that the Eugenics and Maternal Protection Act was being implemented in accordance with a very strict procedure. Any person or family who considered that their rights had been infringed by enforced surgery could bring a complaint by way of legal recourse. Awarding compensation in cases of enforced surgery performed under the former law was, however, difficult. Relevant data on the results of operations performed were disclosed every year and it was not proposed to make new data available at the present stage.

22. In the matter of the war wounded and disabled and the surviving families of the war dead, international requirements in relation to the law in force were not inconsistent with article 14 of the Japanese Constitution. However, his delegation recognized the Committee's concern that prompt consideration should be given to implementing the Act in question, and the contents of decisions under the Act were currently undergoing close study by the Government.

23. Mr. El Shafei (Vice-Chairperson) took the Chair.

24. Mr. MAEDA (Japan), speaking with reference to labour issues, said that, under the law in force, employers were prohibited from disclosing to third parties any information on the nationality, creed, social status or trade union activities of workers with a view to preventing their being hired elsewhere. The Act on Protection of the Privacy of Workers was guaranteed by penal provisions. On the question of working hours, he referred to the reply already provided, namely that the average annual number of hours worked in the fiscal year 1997 had been 1,896. Efforts were now being made to promote further reductions in working hours. A revision of the Labour Standards Act in 1998 established a maximum for the number of hours of overtime and provided for steps to be taken in the event of non-compliance.

25. A question had been asked about the appointment of members of labour relations commissions. The commissions were tripartite bodies comprising members representing the public interest, workers and employers. The worker members were nominated by trade unions. The members of the central labour relations commission were appointed by the Prime Minister on the basis of a comprehensive consideration of all nominations. In the case in question, it so happened that the worker members appointed had been nominated by the Japanese Trade Union Confederation (RENGO). It should be borne in mind that worker members did not represent a particular interest or trade union but the interests of workers as a whole, and that, consequently, the question as to whether or not the worker members had been nominated by RENGO had nothing to do with the actual operation of the commission. The members of local labour relations commissions were appointed by the prefectural Government. As the commissions exercised their powers independently from the State, the Government was not in a position to comment upon their activities. Needless to say, the labour relations commissions were expected to exercise their authority in a wholly independent manner.

26. Replying to a question concerning the privatization of the Japan National Railways, he described in detail the procedure for the recruitment of JR staff and explained that an appeal brought by the trade union against the judgement passed in favour of JRs on 28 May 1998 was pending before the High Court. The Government was closely following developments in the case and hoped that the dispute would be resolved through voluntary efforts on the part of both parties. Lastly, on the issue of the wearing of armbands at meetings of the central labour relations commission, while it fully respected the independence of the commission, the Government sympathized with the view that a practice which cast doubt upon the impartiality of the quasi-judicial proceedings of the labour relations commission should not be allowed. The wearing of armbands was not permitted in court, and fairness demanded that it should also not be allowed at meetings of the commission. The Government regretted, however, that the commission's examining activities should be suspended for that reason, and hoped that the matter would be resolved expeditiously through the efforts of all parties.

27. Ms. Chanet (Chairperson) resumed the Chair.

28. The CHAIRPERSON, having thanked the Japanese delegation for its lengthy and wide-ranging dialogue with the Committee, said that the positive factors

noted during the current review included, under the heading of gender equality, the New National Plan of Action Towards the year 2000, the establishment of the Headquarters for the Promotion of Gender Equality and the amendment of the Equal Employment Opportunity Law. Other commendable steps were the enactment of legislation on measures to protect human rights and to promote the Ainu culture as well as the abolition of the legislation on enforced sterilization of handicapped women.

29. As to subjects of concern, the Committee's overall impression was that the submission of the Japanese report and the ensuing dialogue had been a somewhat formal exercise. In particular, none of the Committee's recommendations in 1993 concerning, for example, the Optional Protocol, children born out of wedlock, the "substitute prison" system and the death penalty had been implemented. Moreover, the same arguments continued to be advanced in defence of the status quo. As Japan had not entered any reservation to the Vienna Convention on the Law of Treaties, arguments based on the primacy of domestic law and public opinion were invalid. Different interpretations of certain provisions of the Covenant were also inadmissible. There seemed to be some misunderstanding of the Committee's role. It was not an advisory body but was entrusted with responsibility under the Covenant to monitor compliance by States parties with the Covenant's provisions. The Government also had a somewhat dismissive attitude to material reported by non-governmental organizations (NGOs). When the Committee, NGOs, jurists and even the Japanese Bar Association or the courts agreed that certain provisions of the Covenant had been misinterpreted, the Government obviously needed to review its position and engage in an open-minded debate on the issue involved.

30. The Committee trusted that its concluding observations, to be communicated to the delegation in due course, would meet with a more positive response from the Japanese authorities than on the previous occasion.

31. In conclusion, she expressed appreciation for the scope and detail of the fourth periodic report and thanked the very large and highly competent delegation and the many NGOs that had attended the session.

32. Mr. AKAO (Japan) thanked the Committee for what had been, in his opinion, a constructive and fruitful dialogue. The Japanese authorities would give careful consideration to the Committee's concluding observations.

33. He wished to set the record straight on the issue of Korean schools in Japan. In the view of the Japanese authorities, it was a matter of options rather than discrimination. Korean parents had the option of sending their children to a Japanese school for the nine-year period of compulsory schooling or to a Korean "miscellaneous" school. The Korean schools were entitled to apply to the Ministry of Education for recognized status but refused to do so. The problem might be solved if a certain measure of flexibility was shown by both sides.

34. The Japanese delegation withdrew.

The public part of the meeting rose at 4.20 p.m.